

December 23, 2008

Katharine R. Boyce

@pattonboggs.com

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response to MURs 6110 and 6127

Dear Mr. Jordan:

As designated counsel to David von Storch, President of VIDA Fitness, I provide the following response to your letter of November 3, 2008 regarding Matter Under Review ("MUR") 6110 and your subsequent letter of November 13, 2008 regarding MUR 6127. As both matters involve complaints filed by third parties¹ making the same assertions in connection with Mr. von Storch and VIDA Fitness, this response addresses these issues in one letter by the extension deadline of December 23, 2008 granted by the Commission.

For the reasons set forth below, we believe that the allegations in these two complaints regarding prohibited corporate in-kind contributions and failure to include proper joint fundraising notices are without merit, and that no action should be taken against Mr. von Storch, or against VIDA Fitness or Bang Salon Spa.

The complaints giving rise to the above-referenced MURs allege that on September 19, 2008, VIDA Fitness and Bang Salon Spa, described as commercially affiliated with one another, sent two blast emails to their customer lists inviting the recipients to attend a fundraising event at VIDA Fitness on September 26, 2008 and containing a solicitation for contributions to the Obama Victory Fund ("OVF"). *See* MUR 6110 complaint at 1; MUR 6127 complaint at 6. Both complaints allege violations of the prohibitions against contributions by corporations,

specifically those contained in the Commission's regulations at 11 C.F.R. § 114.2(f) (1), regarding facilitating the making of contributions to candidates and using corporate resources to

¹ The District of Columbia Republican Committee filed its complaint on October 21, 2008, now the subject of MUR 6110 ("MUR 6110 Complaint"), and the California Republican Party filed its complaint on November 3, 2008, now the subject of MUR 6127 ("MUR 6127 Complaint").

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do so. MUR 6110 at 2; MUR 6127 at 6. The first complaint alleges violation of the Commission regulations that require certain notices to be included in joint fundraising solicitations. *See* MUR 6110 at 3. The second complaint further alleges that VIDA Fitness violated 11 C.F.R. §§ 114.2(f)(2)(i)(B)-(D) by knowingly exchanging services at less than the usual and normal charge for use of corporate customer lists and facilities. MUR 6127 at 6-7.

David von Storch is President of VIDA Fitness, a Subchapter S corporation of which he is the sole shareholder. Declaration of David von Storch ("von Storch Dec.") ¶ 1, attached hereto as Exhibit 1. The newest location of VIDA Fitness is 1515 15th Street, NW, Washington, DC, of which the Bang Salon Spa is an informal subtenant. *Id.* As an active Democrat, Mr. von Storch supported Barack Obama for President, the OVF and the Democratic National Committee ("DNC"), and he became acquainted with Tom Petrillo of the DNC's Finance Department. *Id.* ¶ 2. In mid-September, 2008, Mr. von Storch learned from Mr. Petrillo about a fundraiser planned for September 26 featuring celebrity entertainer, Sarah Jessica Parker, to be hosted by and to benefit OVF. *Id.* ¶ 3. Mr. von Storch had told Mr. Petrillo about empty space at the newest location of VIDA Fitness at 1515 - 15th Street, NW, and Mr. Petrillo said that the OVF would pay to rent the space and cover all other costs, and that the OVF would have to be invoiced for any such costs incurred. *Id.* At the time in question, this new location of VIDA Fitness had not yet been used for any meeting, event or other purpose, although planning was underway for a grand opening. *Id.* ¶ 4.

Prior to September 19, Mr. Petrillo emailed Mr. von Storch the OVF invitation for the September 26 event that contained information on the event's entertainment and location. *Id.* ¶ 5. A copy of the OVF invitation is attached hereto as Exhibit A to von Storch Dec. The OVF invitation also displayed the joint fundraising notice required in 11 C.F.R. § 102.17(c)(2). *Id.* at 2.

Further discussion of the specific issues raised in MURs 6110 and 6127 complaints is presented below.

Use of the Invitation and Email List

Mr. von Storch acted in his personal capacity as an individual volunteer for the OVF, without consulting or informing Mr. Petrillo, in deciding to revise slightly the event invitation that he had received. von Storch Dec. ¶ 7. Most of the text was retained, a hyperlink was added that sent potential contributors directly to the joint OVF-DNC webpage created specifically for the September 26 event, and a special disclaimer² also was added to make clear that the event was

² The disclaimer stated: "VIDA and Bang do not endorse nor support any political candidate, but do encourage their members and friends to get involved and participate in the electoral process."

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not a corporate sponsored or funded event. *Id.* A copy of the revised invitation and the hyperlink-accessible joint fundraising webpage, displaying the required joint fundraising notice, is attached hereto as Exhibit B to von Storch Dec.

Mr. von Storch had previously prepared a mailing list of customers and friends of VIDA Fitness and Bang Salon Spa (whose email lists are often commingled and used interchangeably for various purposes) to invite them to a grand opening of the new location as a special offer and promotion. von Storch Dec. ¶ 9. Mr. von Storch decided to use the list to send out the revised invitation, using the VIDA Fitness email account to send to most of the invitees and the Bang Salon Spa email account to send to the others on the list. *Id.* Other than the one-time use of the Bang Salon Spa's email account, there was no involvement of Bang Salon Spa or any of its facilities with the OVF event. *Id.*

Mr. von Storch spent only a few hours of personal time as a volunteer in fashioning the revised electronic invitation and ensuring that it was sent only once to those email addresses on the list. *Id.* ¶ 10. He later paid VIDA Fitness \$3,000.00 as a personal in-kind contribution to the OVF of the usual and normal charge for a one-time rental of the email list, having calculated the value as \$150.00 per 10,000 names, doubled to cover the 20,000 email addresses on the list. *Id.*

As noted above, Mr. von Storch acted on his own as an individual volunteer, never coordinating or consulting with, or even informing, Mr. Petrillo about revising the DNC's invitation or sending the revised electronic invitation to an email list. *Id.* ¶ 11. Neither did he, nor VIDA Fitness, nor Bang Salon Spa, provide the email list or a copy of the list to the DNC or OVF. *Id.* Since neither Mr. Petrillo, or anyone else connected with the DNC or OVF, directed Mr. von Storch to purchase or rent the list, and nor was the list or a copy of it transferred to the DNC or OVF, the provisions of 11 C.F.R. § 100.94(e) do not apply. Mr. von Storch's uncompensated personal services related to his internet activities, and his use of equipment for uncompensated internet activities, were permissible under other provisions of 11 C.F.R. § 100.94. As to his use of corporate facilities in connection with the email list, he was unaware that such use of a corporation's customer list could constitute an improper in-kind contribution by the corporation unless the corporation received advance payment of the usual and normal use of the list. *Id.* ¶ 18. As mitigation, he later used his personal funds to reimburse VIDA Fitness within a commercially reasonable time for the internet usage, as required by 11 C.F.R. § 114.9(d), and he personally paid the usual and normal rental charge for his one-time use of the email list. To the extent that Mr. von Storch's payment of the rental cost of the one-time use of the email list might constitute an in-kind contribution to OVF or the DNC, he has requested that such contribution be disclosed. Von Storch Dec. ¶ 10.

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VIDA Fitness did not facilitate the making of contributions to OVF by allowing the email list to be used "for fundraising activities without ever collecting payment" as asserted. MUR 6127 Complaint at 6. Nor did VIDA Fitness violate federal corporate contribution prohibitions by "knowingly exchanging services at less than the usual and normal charge" as alleged. *Id.* Rather, Mr. von Storch made personal use of the email list, and ensured that VIDA Fitness did, in fact, collect payment with his reimbursement payment made from his personal funds. von Storch Dec. ¶ 10. And, contrary to the MUR 6110 complaint's assertion that the required joint fundraising notice was absent, the hyperlink inserted in the revised invitation provided immediate access to the information required in 11 C.F.R. § 102.17(c)(2) on the joint fundraising webpage that the DNC and OVF had established for the event. *Id.* ¶ 7.

Use of VIDA Fitness Facilities

Mr. von Storch also acted in his individual capacity as a volunteer in agreeing to make space available for the September event for which the OVF or DNC agreed to and did cover the usual and normal rental charge and other costs. *Id.* ¶ 3. As these facilities had not yet been open to the public, *id.* ¶ 4, there was no history of customary use of, or usual and normal rental charge for, the venue. Therefore, neither Mr. von Storch nor VIDA Fitness made use of any "meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups" as alleged in one of the complaints. MUR 6127 Complaint at 6. Nor did a prohibited corporate contribution result, as alleged in that complaint, because Mr. von Storch submitted the invoice requested by the DNC, and the OVF paid VIDA Fitness for rental of its facilities and beverages provided at the event within a commercially reasonable 60-day timeframe. von Storch Dec. ¶ 13.

Contrary to the allegations contained in both complaints, VIDA Fitness did not facilitate the making of contributions to the DNC or OVF in violation of 2 U.S.C. § 441b(a) or 11 C.F.R. § 114.9(f)(2). At all times Mr. von Storch acted on his own in his individual capacity as a volunteer for the DNC and OVF. *Id.* ¶ 17. He neither ordered nor directed subordinates to plan, organize, or carry out any fundraising activities. To the extent that he made use of any corporate facilities in the course of his volunteer activities, his use was occasional, isolated, or incidental and well within the safe harbor as permitted under 11 C.F.R. §§ 114.9(a)(1) and (2)(i)-(ii).

On September 26, the OVF had delivered and set up, at its own expense, the stage and sound system, and oversaw volunteers managing the event and the guests. *Id.* ¶ 11. The event turned out to be very chaotic because the celebrity attraction cancelled at the last minute, confusion reigned, and timely invoicing of the OVF did not occur. *Id.* When Mr. Petrillo reminded Mr. von Storch that an invoice still needed to be submitted, VIDA Fitness sent the invoice for a usual and normal rental price for use of the facilities and beverages within a commercially reasonable time.

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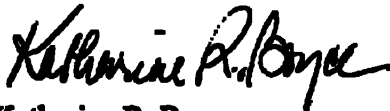
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Id. ¶¶ 12, 14. The OVF sent a check promptly to VIDA Fitness for full payment. *Id.* ¶ 15. A copy of the invoice and the check are attached hereto as Exhibits C and D of von Storch Dec.

In summary, VIDA Fitness and Bang Salon Spa did not unlawfully facilitate contributions to the DNC and OVF by allowing them to use any corporate customer email list or facilities at less than the normal and usual charge, as alleged in the second complaint. See MUR 6127 Complaint at 7. VIDA Fitness did not allow such usage; Mr. von Storch made use of the list while acting in his individual capacity as a volunteer and he paid with personal funds for his one-time rental of the list. As noted, neither the OVF nor the DNC ever rented or used the list. Contrary to the assertion that VIDA Fitness never collected payment for use of its facilities, see MUR 6127 Complaint at 6, Mr. von Storch submitted an invoice to the DNC, and the OVF reimbursed VIDA Fitness for the use of facilities and beverages. VIDA Fitness certainly did not knowingly violate any corporate contribution prohibition because it never exchanged services at less than the normal and usual charge, as alleged in the complaint in MUR 6127.

For the reasons set forth above, we respectfully request that the Office of the General Counsel either immediately dismiss the complaints in MURs 6110 and 6127 as they relate to VIDA Fitness and Bang Salon Spa, or, in the alternative, consider referring these two matters to the Commission's Alternative Dispute Resolution ("ADR") process. By this written request, Mr. von Storch agrees to the Commission's terms for participation in the ADR process should the Commission decide to pursue these matters in this fashion. While we understand that such referral is not granted automatically, we believe the circumstances described in this response warrant such a referral.

Sincerely,



Katharine R. Boyce
Counsel to David von Storch

cc: David von Storch
Enclosures

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EXHIBIT A

The Gay and Lesbian Leadership Council
of the
Democratic National Committee

Cordially invites the LGBT Community and Allies to a reception with

Sarah Jessica Parker
Benefiting the Obama Victory Fund

Friday, September 26, 2008

Vida Fitness
1515 15th Street, NW
Washington, DC

6:00 PM - 8:00 PM

Host Committee: \$2,500

***Host committee members are invited to a VIP reception at 6:00 PM at Halo,
located at 1435 P Street, NW***

Supporter: \$250 per person
Friend: \$100*
(Limited tickets at this level)

To R.S.V.P. please complete the form below or visit:
<https://donate.barackobama.com/page/contribute/DCSIP>

If you have any questions, or would like additional information, please contact
Thomas Petrillo @ _____ or at _____
RSVP by fax to 202-572-7917

Contributions and gifts to Obama Victory Fund are not deductible for federal income tax purposes.

**Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and
the Democratic National Committee.**

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The first \$2,300 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$28,500 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

Please make checks payable to:
OBAMA VICTORY FUND

Thomas Petrillo
430 S. Capitol Street, SE
Washington, DC 20003
Fax: (202) 572-7917

Total Amount: \$ _____

Click here to contribute online at <https://donate.barackobama.com/page/contribute/DONOR>

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 in an election cycle.

First & Last Name: _____

My Guest's Name: _____

Address: _____

City/State/Zip: _____

If foreign address provide US passport number: _____

Employer: _____ Occupation: _____

Work Phone: _____ Work Fax: _____

Home Phone: _____ Email: _____

☐ I certify that I am a U.S. citizen or legal permanent resident of the U.S.

Signature: _____

Contribute by Personal Check:

Please make checks payable to "Obama Victory Fund" and mail to the address listed above.

Contribute by Credit Card

Please bill my personal credit card: ☐ Visa ☐ MasterCard ☐ AMEX ☐ Discover

Card Number: _____ Exp: _____

Name as it appears on the card: _____

Signature: _____

Second Name on Account, if Joint Account*: _____

*Contributions will be evenly attributed between names.

2nd Name Employer: _____ 2nd Name Occupation: _____

Second Signature for Joint Account: _____

OVI Staff Name: _____ Signature: _____

Obama Victory Fund does not accept contributions from currently registered federal lobbyists, registered foreign agents, political action committees, or minors under the age of 16. Federal law prohibits the acceptance of corporate contributions. Contributions and gifts to the Obama Victory Fund are not deductible for federal income tax purposes.

DC247

Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and the Democratic National Committee.

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EXHIBIT B

If you are having problems viewing this email, click here to view it on our web site.



OBAMA
BIDEN

A Sneak Preview Reception With

Sarah Jessica Parker

Benefiting the Obama Victory Fund



OBAMA
PRIDE

Friday, September 26, 2008

VIDA Fitness

1515 15th Street, NW Washington, DC

6:00 PM – 8:00 PM

Host Committee: \$2,500

* Host committee members are invited to a VIP reception at 6:00 PM
at VIDA, located at 1435 P Street, NW

Supporter: \$250 per person

Friend: \$100 (limited tickets at this level)

To R.S.V.P. please visit:

www.obamavictoryfund.com/RSVP

**Contributions and gifts to Obama Victory Fund are not deductible for
federal income tax purposes.**

**If you have any questions, or would like additional information, please contact Theresa
Pattillo @ _____ or at _____ RSVP by fax to 202-672-7917**

OBAMA VICTORY FUND
1515 15th Street, NW
Washington, DC 20005
Phone: 202-672-7917
Fax: 202-672-7917
www.obamavictoryfund.com

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These search terms are highlighted: obama victory fund vlad filinov sarah jessica

Last-visit: version :

The Gay and Lesbian Leadership Council of the Democratic National Committee

Invites you to a reception with

Sarah Jessica Parker

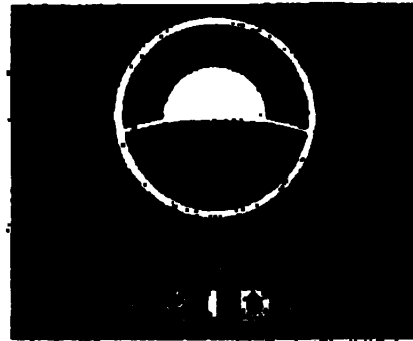
Benefiting the Obama Victory Fund

Friday, September 26, 2008
6:00 p.m. - 8:00 p.m.

Vlad Filinov
1515 16th Street, NW
Washington, DC

Map

Any questions or comments contact:
Tom Pettie



Contributor

FIRST NAME LAST NAME

ADDRESS

CITY

STATE ZIP / POST

EMAIL ADDRESS

PHONE NUMBER

Employment

To comply with Federal law, we must use best efforts to obtain, maintain, and update the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.

EMPLOYER

Tickets

• \$2,000.00 Host
Host Committee members are invited to a VIP reception at 6:00 PM at Volo,
located at 1430 P Street, NW

• \$1,000.00 VIP

• \$500.00 Supporter

0 tickets, \$0.00

Payment Options

☐ VISA ☐ MASTERCARD ☐ AMERICAN EXPRESS ☐ DISCOVER

CARD NUMBER

EXPIRATION
Month Year

Legal Compliance

☐ CHECK THIS BOX TO CONFIRM THAT THE FOLLOWING
STATEMENTS ARE TRUE AND ACCURATE:

- 1 I am a United States citizen or a lawfully-admitted permanent resident.
- 2 I am at least 18 years old.
- 3 This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
- 4 This contribution is not made from the funds of a political action committee.
- 5 This contribution is not made from the treasury of an entity or person who is

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OCCUPATION

a federal contractor.

6 This contribution is not made from the funds of an individual registered as a federal lobbyist or a foreign agent, or an entity that is a federally registered lobbying firm or foreign agent.

7 The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution.

Additional Information

PLEASE LET US KNOW WHO ENCOURAGED YOU TO MAKE THIS CONTRIBUTION



The first \$2,500 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$25,000 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

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